

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-456

July 27, 1999

PUBLIC UTILITIES COMMISSION
Energy Conservation Programs by
Electric Transmission and Distribution
Utilities (Chapter 380)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION

The purpose of this rulemaking is to establish the funding levels and assessment mechanism necessary to implement the recently amended provisions of 35-A M.R.S.A. § 3211 related to energy conservation programs conducted by electric transmission and distribution utilities. The rule will replace currently existing Chapter 380.

II. BACKGROUND

As part of the legislation enacted in 1997 to deregulate electric generation service after March 2000, the Legislature included certain requirements to maintain the provision of energy conservation by transmission and distribution (T&D) utilities. 35-A M.R.S.A. § 3211 (Supp. 1998) (repealed and replaced effective September 18, 1999 by P.L. 1999, ch. 336, § 3). On January 6, 1999, the Commission provisionally adopted a new version of Chapter 380 to implement the statutory provisions. This included establishing a funding level for programs (1.4358 mils per kWh, net of ongoing costs of programs), a bidding process for utilities to select contractors to operate programs, and spending levels for low-income customers and other customer classes. As required by statute, this was a major substantive rule requiring legislative approval pursuant to 5 M.R.S.A. §§ 8071-8074.

After consideration of various amendments to 35-A M.R.S.A. § 3211, the Legislature on May 20, 1999, adopted a resolve not authorizing the rule as provisionally adopted by the Commission in January 1999.¹ In its place, the Legislature adopted An Act to Secure Environmental and Economic Benefits, P.L. 1999, ch. 336. The Act authorizes the State Planning Office to coordinate the development of a state energy policy and guide the development of statewide conservation programs to be implemented by transmission and distribution utilities. This includes creating overall

¹ The Resolve was enacted as emergency legislation and therefore became effective on May 20, 1999. Based on this Resolve, we now formally close *Public Utilities Commission, Energy Conservation Programs by Electric Transmission and Distribution Utilities (Chapter 380)*, Docket No. 97-591.

objectives and strategies, reviewing and approving utility implementation plans, and monitoring and evaluating T&D utility programs. 5 M.R.S.A. § 3305-B(2). The Commission's role is to establish total conservation program expenditures for each transmission and distribution utility and to assess T&D utilities to fund the efforts of the State Planning Office, as specified by statute. 35-A M.R.S.A. § 3211(6). The Commission must adopt rules to implement the provisions in 35-A M.R.S.A. § 3211. These are routine technical rules pursuant to 5 M.R.S.A. § 8071(2).

The Commission opens this rulemaking to propose a rule that will be consistent with the provisions of the new legislation.

III. DISCUSSION OF INDIVIDUAL SECTIONS

A. Section 1: Definitions

Section 1 contains the definition of the terms used in this Chapter. The definitions are derived directly from 35-A M.R.S.A. § 3211 and 5 M.R.S.A. § 3305-B.

B. Section 2: Conservation Program

Consistent with 5 M.R.S.A. § 3305-B, this section requires utilities to implement programs that will be consistent with the programs developed by the State Planning Office. Utilities must select providers of energy efficiency services through a bid process. The State Planning Office may request a waiver of the bid requirement upon a showing that the program(s) for which it is seeking a waiver is consistent with programs developed by the State Planning Office and that selection of a program provider, other than by bid, is in the best interests of the State.

C. Section 3: Funding; Cost Recovery

Section 3 provides that energy conservation programs will be funded through utility rates. The Commission will establish the funding recovery mechanism through rate proceedings for both program costs and recovery of the assessment for the State Planning Office. Consistent with 35-A M.R.S.A. § 3211(4), section 3(B) of this Chapter sets the minimum funding level at 0.5% of total transmission and distribution revenues for each T&D utility. To the extent required by the State Planning Office's statewide conservation program developed pursuant to 5 M.R.S.A. § 3305-B(2), funding may be increased by the Commission to .15 cents per kWh, the statutory cap. These amounts include any continuing expenditures associated with programs to promote conservation undertaken at the direction of the Commission prior to March 1, 2000 and any assessments pursuant to section 4 of this Chapter.

D. Section 4: Assessment

Section 4 describes the process for assessing each T&D utility for the costs associated with supporting the State Planning Office to carry out its responsibilities under 5 M.R.S.A. § 3305-B. 35-A M.R.S.A. § 3211(6) requires the Commission to “assess an amount of funds equal to the amount that the legislative allocation in that fiscal year from the Conservation Program Fund established under Title 5, section 3305-B exceeds any unencumbered amount in the fund carried forward from the prior fiscal year.” The legislative allocation is \$137,255 in 1999-2000 and \$150,702 in 2000-2001. These amounts would be offset by an amount unspent and carried over from the previous fiscal year.

E. Section 5: Reporting

Section 5 requires T&D utilities to report to the Commission quarterly on their energy conservation activities. This section also requires T&D utilities to submit to the Commission copies of any evaluation reports filed with the State Planning Office.

F. Section 6: Waiver or Exemption

Section 6 contains the standard rule waiver provisions.

IV. PROCEDURES FOR THIS RULEMAKING

This Rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing will be held on August 24, 1999, at 10:00 a.m., in the Public Utilities Commission Hearing Room, 242 State St., Augusta, Maine.

Please notify the Public Utilities Commission if special accommodations are needed in order to make the technical conference (or hearing, if one is held) accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the scheduled event.

Written comments on the proposed rule may be filed with the Administrative Director no later than September 7, 1999. Please refer to the Docket Number of this proceeding, Docket No. 99-456 when submitting comments.

In accordance with 5 M.R.S.A. § 8057-A(1), the Commission invites all interested persons to comment on the fiscal impact and all other implications of the proposed rule.

The Administrative Director shall send copies of this Order and the attached rule to:

1. All electric utilities in the State;

2. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
3. All persons on the Commission's electric restructuring service list, Docket No. 95-462;
4. All persons listed on the service list, Docket No. 97-591;
5. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
6. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Accordingly, we

ORDER

1. That the Administrative Director send copies of this Notice of Rulemaking and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule; and
2. That the Administrative Director send a copy of this Notice of Rulemaking and attached proposed rule to the Secretary of State for publication in accordance with 5 M.R.S.A. § 8053.

Dated at Augusta, Maine, this 27th day of July, 1999.

BY ORDER OF THE COMMISSION

Raymond Robichaud
Assistant Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond